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5263-37

Calendar No. 796

101ST CONGRESS *2d Session*	SENATE	REPORT 101-442

SUBSIDIZED OPERATORS IN DOMESTIC TRADE

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

together with

MINORITY VIEWS

OF THE

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 2170

AUGUST 30, 1990.—Ordered to be printed

Filed under authority of the order of the Senate of August 2 (legislative day, July 10), 1990

U.S. GOVERNMENT PRINTING OFFICE

39-010 WASHINGTON : 1990

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101ST CONGRESS
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101-442

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Filed under authority of the order of the Senate of August 2 (legislative day, July 10), 1990

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany S. 2170]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2170) to prescribe the conditions under which contractors receiving operating-differential subsidy or their affiliates may engage in coastwise or intercoastal trade, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

PURPOSE OF BILL

The bill, as reported, would prescribe the conditions under which U.S.-flag ship operators receiving operating-differential subsidy (ODS) to operate in the U.S. foreign commerce or their affiliates may engage in coastwise or intercoastal trade.

BACKGROUND AND NEEDS

ODS is offered to U.S.-flag ship operators to help place U.S.-flag operating costs on a parity with vessels of foreign competitors. Subsidy is based on the difference between the fair and reasonable cost of insurance, maintenance, repairs not compensated by insurance, and wages of officers and crews, and the cost of such items if the

vessels were of foreign registry. Subsidy is paid pursuant to ODS contracts between the Government and the operators. Subsidy is paid only for the operation of vessels in an essential service of U.S. foreign commerce that is required to meet foreign-flag competition. U.S.-flag ship operators who serve exclusively in the domestic trades do not receive ODS.

S. 2170 does not address all issues pertaining to ODS but focuses only on one portion of the ODS program—that is, service by ODS operators in the domestic trade.

Section 605(a) of the Merchant Marine Act of 1936 (the Act) prohibits the payment of ODS for the operation of any vessel on a voyage on which it engages in coastwise or intercoastal trade. There are limited exceptions to this prohibition for specified voyages. Subsidy may be paid on a round-the-world voyage, or a round voyage from the west coast of the United States to a European port or ports, or a round voyage from the Atlantic coast to the Orient which includes intercoastal ports of the United States, or a voyage in foreign trade during which the vessel may stop at Hawaii or at an island possession or island territory of the United States. If a subsidized operator is allowed in the domestic trade, subsidy payments for the entire voyage must be reduced on the basis of a ratio of the gross revenue derived from the domestic cargo to the gross revenue derived from the entire voyage.

Section 805(a) of the Act requires that, before an ODS operator or its affiliate can operate in the domestic trade, permission must be obtained from the Secretary of Transportation (Secretary), through the Maritime Administration (MarAd) within the Department of Transportation (DOT). (The term "affiliates" or "affiliated service" refers to any holding company, subsidiary, affiliate, or associate of such contractor or charter, or any officer, director, agent or executive thereof.) Such approval is necessary for both "mixed" service—service by an ODS contractor (an operator that receives ODS) with subsidized vessels on voyages in both foreign and domestic trade, i.e., voyages permitted under Section 605(a) of the Act—and "affiliated" service—service by an affiliate of an ODS contractor using unsubsidized vessels in the domestic trade.

Section 805(a) also provides the Secretary with two criteria to determine whether to permit "mixed" or "affiliated" services. First, the proposed service must not result in "unfair competition" to any domestic operator operating exclusively in the domestic trade. Second, the proposed service must not be prejudicial to the objects and policy of the Act. (The objects and policy of the Act, as states in section 101, include the desirability of maintaining a merchant marine sufficient to carry the water-borne commerce of the United States and a substantial portion of the water-borne export and import foreign commerce of the United States.) Additionally, section 805(a) provides that an ODS contractor may not divert funds from foreign-trade operations for which a subsidy is paid into domestic trades.

Also under existing law, ODS contractors may be allowed to use a vessel built with construction differential subsidy (CDS) in dedicated domestic service once that vessel exceeds 25 years of age. Under title V of the Act, provision is made for CDS funds to build vessels to be used in the U.S. foreign commerce. There is no CDS

for vessels operating in the U.S. domestic trade. The purpose of the subsidy is to enable U.S. shipyards to construct vessels in the United States on a parity with their foreign competitors, and thus enable the U.S. ship purchasers to obtain U.S.-built vessels at competitive world prices. Although there is no specific statutory provision, administrative interpretation and case law have held that, once CDS is paid back (over a 25-year period), the benefit derived from the government no longer exists; therefore, the vessel should be allowed to enter the domestic trade. Within the next few years, several CDS-built vessels will reach the end of their 25-year statutory lives and, accordingly, will become eligible to operate exclusively in domestic trade.

Although existing law requires a payback of subsidy received by an operator while operating in the domestic trade, this requirement may not be sufficient to protect unsubsidized carriers operating exclusively in the domestic trade from competition by an operator that receives subsidy in the international trade. Also, under MarAd's interpretation of existing law, adequacy of existing service is considered in determining whether the entry of a subsidized carrier into the domestic trade would result in unfair competition or be prejudicial to the objects and policy of the Act.

This bill would clarify the conditions under which subsidized operators may enter the domestic trade and add as a statutory requirement that adequacy of existing service be considered in granting a subsidized carrier entry into the domestic trade. The bill also would prevent older CDS-built ships from being brought into the domestic trades.

Legislative History

S. 2170 was introduced by Senator Inouye on February 26, 1990 and was referred to the Committee. On May 16, 1990, the Merchant Marine Subcommittee held a hearing to consider S. 2170. Testimony was received from witnesses representing the Administration, international ship operators, domestic ship operators, and shipbuilding interests.

At the time of the hearing on S. 2170, there was an application pending at MarAd by a subsidized carrier, American President Lines (APL), to provide service to Hawaii as part of its service from the west coast to the Orient. APL's application to engage in the Hawaii trade was filed with MarAd on February 11, 1987. On October 2, 1989, an Administrative Law Judge (ALJ) issued an initial decision granting APL's application subject to certain limiting conditions. Because the initial decision was still under consideration by MarAd at the time of the hearing, the parties to that proceeding were precluded from discussing the specifics of that case outside of that proceeding.

MarAd's initial decision was appealed by Matson Navigation, Sea-Land, and APL (as to the conditions placed on APL in the approval). Under normal circumstances, the MarAd Administrator would make the final decision; however, in this case, the MarAd Administrator, Warren G. Leback, recused himself from the decision because of a previous relationship with Matson. MarAd issued its final agency decision on July 24, 1990. In its decision, MarAd

reversed the ALJ's decision, thereby denying APL the right to enter the domestic trade. APL has requested that the Secretary review MarAd's decision, which is within the Secretary's discretion.

On July 31, 1990, in open executive session the Committee ordered S. 2170 reported favorably by a vote of 13 to 7.

A companion bill, H.R. 4350, was introduced in the House on March 21, 1990, by Congresswoman Saiki. No hearings have been held on H.R. 4350.

Summary of Major Provisions

This bill would revise the current standards used by the Secretary to determine whether an ODS operator of liner vessels (i.e., regularly scheduled service) would be permitted to serve in domestic trade. There would be no change in existing law with regard to proposed domestic operation of bulk vessels whose operators receive ODS. Current law requires the Secretary to find that the proposed domestic operation of bulk or liner vessels would not result in unfair competition to any person operating exclusively in the coastwise or intercoastal service or be prejudicial to the objects and policy of the Act. If an application for domestic operation is approved, the Act prohibits coastwise or intercoastal service being supported, either directly or indirectly, by ODS.

"Mixed" service

Under this bill, "mixed" service in the domestic and foreign trades would be allowed only if existing service by all vessels in the relevant domestic trade is "inadequate."

The Secretary, upon receipt of a written application for proposed mixed service, would be required to hold a hearing, in compliance with title 5, U.S.C. to determine the adequacy of existing service in the relevant domestic trade. The Secretary would receive evidence on the quantity and quality of existing service, description of the proposed service and its effect on existing service, and conditions, that should be contained in any grant of permission for the proposed mixed service. The Secretary may grant such application only after determining that the existing service is inadequate.

In addition to the new inadequacy standard, this bill also retains the current standards prohibiting service by an ODS operator with subsidized vessels in the domestic trade if such service would result in: (1) unfair competition to an exclusively domestic operator; (2) prejudice to the objects and policy of the Act; or (3) the applicant's service in the domestic trade being supported, directly or indirectly, by any money paid by the United States to subsidize the operations of the contractor in the foreign commerce of the United States.

"Affiliated" service

The inadequacy test established for mixed service would not apply to affiliated service. This bill would retain the current standards prohibiting domestic service by an unsubsidized vessel or the affiliate of a subsidized operator if such service would result in: (1) unfair competition to any exclusively domestic operator; (2) preju-

dice to the objects and policy of the Act; or (3) the proposed affiliated service being supported, either directly or indirectly, by ODS. However, this bill would change current law to prohibit domestic service by an affiliate of an ODS operator with vessels that were built with CDS and are over 25 years of age.

Mixed or affiliated services in effect on the date of enactment of the bill would be subject to an administrative hearing to determine whether their operations are in accordance with the amendments to section 805(a) contained in this bill. The effect of this retroactive application would be to require an additional review of previously approved domestic services by ODS operators.

Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1984, the Committee provides the following cost estimate, prepared by the Congressional Budget Office.

U.S. Congress,
Congressional Budget Office,
Washington, DC, August 23, 1990.

Hon. Ernest F. Hollings,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 2170, a bill to prescribe the conditions under which contractors receiving operating-differential subsidy or their affiliates may engage in coastwise or intercoastal trade. The bill was ordered reported by the Senate Committee on Commerce, Science, and Transportation on July 31, 1990. CBO expects that the implementation of this bill would have no significant impact on the federal budget.

S. 2170 would amend Section 805(a) of the Merchant Marine Act of 1936, which prohibits the payment of operating differential subsidies to contractors who engage in domestic services or operations. Section 805(a) also specifies the conditions under which this general prohibition may be waived.

Specifically, Section 2 of the bill would impose more stringent requirements for subsidized liner companies that propose mixed domestic/foreign service offerings. The more extensive regulatory procedures required by this section probably would increase the average cost of each such proceeding. Nevertheless, total additional costs are not expected to be significant because waivers for mixed services are sought infrequently even under the less stringent restrictions that currently apply.

We expect that other provisions of the bill would have no impact on federal spending.

Enactment of this bill would not affect the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deborah Reis, who can be reached at 226–2860.

Sincerely,

ROBERT D. REISCHAUER,
Director.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation.

NUMBER OF PERSONS COVERED

This legislation would change the standard used by MarAd in determining whether to allow ODS-subsidized carriers or their affiliates to serve the domestic trades. Any new requirements would apply only to those ODS-subsidized liner operators or their affiliates which apply for or have received permission to serve the domestic trades.

The bill has retroactive application. Therefore, MarAd will be required to initiate an administrative hearing, within 180 days after enactment, to determine whether the mixed or affiliated service by any of the common carriers with existing permissions to serve in domestic trade is in accordance with section 805(a), as amended by this bill. At this time, three operators have existing section 805(a) permissions.

ECONOMIC IMPACT

This legislation will have a negligible economic impact on MarAd because it only changes the standard used by MarAd in making certain determinations which it is currently required to make under existing law. The legislation could have a beneficial economic impact on exclusively domestic operators currently in the trade because it is intended to make it more difficult for subsidized operators to enter the domestic trade. Subsidized operators seeking to enter the domestic trade will not benefit from the legislation. Operators who have previously received section 805(a) permission from MarAd may suffer a negative economic impact because previously granted permission will be subject to another hearing and a stricter standard.

PRIVACY

This legislation will not have any adverse impact on the personal privacy of individuals.

PAPERWORK

This legislation only changes standards used by MarAd in making certain determinations which it is currently required to make under existing law. Therefore, it will not substantially increase the paperwork requirements of MarAd.

SECTION-BY-SECTION ANALYSIS

SECTION 1

This section amends section 805(a) of the Act to state that the Secretary shall not grant an application by a bulk vessel operator, that is receiving ODS, to operate in coastwise or intercoastal trade, if granting the application would result in unfair competition to existing exclusively domestic operators or would be prejudicial to the objects and policy of the Act. This is the present standard in section 805(a) for granting applications by bulk and liner vessel operators to enter the domestic trade. Therefore, the bill would retain the present standard only for bulk vessel operators.

SECTION 2

This section adds a new standard to section 805(a) for determining whether an application for a proposed mixed foreign and domestic service by a common carrier receiving ODS for foreign commerce (an ODS liner operator) should be granted. A mixed service is service by a subsidized carrier with vessels that operate in both domestic and international trade. An application may be granted, under the new standard, if the Secretary finds that existing coastwise or intercoastal service by all vessels in the relevant trade is inadequate. In determining whether existing service is inadequate, the Secretary may evaluate both the quantity and quality of existing service. The inadequacy standard does not apply to affiliated services. Affiliated services are services by a subsidized operator or an affiliate of a subsidized operator using unsubsidized vessels in the domestic trade.

The Secretary must hold a hearing on applications by ODS liner operators to operate a proposed mixed service for the purpose of receiving evidence on the quantity and quality of existing service, a description of the proposed service and its effect on existing service, and conditions that should be contained in any grant of permission for the proposed mixed service.

The grant of an application to participate in mixed service must contain express conditions to insure that the proposed mixed service (1) will not be prejudicial to the objects and policy of the Act; (2) will not result in any unfair competition to any exclusively domestic operator; and (3) will not result in the applicant's coastwise or intercoastal service being supported, directly or indirectly, by ODS.

After a hearing on affiliated service, the Secretary shall not grant the application, unless a finding based on the entire record is made that the proposed service will not result in any unfair competition to any exclusively domestic operator, and will not result in the applicant's coastwise or intercoastal service being supported, directly or indirectly, by ODS, and also that no vessels over 25 years old built with CDS are to be used in domestic service by an affiliate of an ODS subsidized operator.

SECTION 3

This section adds a new provision to section 805(a) pertaining to violations. The provision permits the Secretary to revoke any permission granted to operate in coastwise or intercoastal trade if a

person diverts money or anything of value used in subsidized foreign-trade operations to the coastwise or intercoastal trade.

SECTION 4

This section adds a new subsection (g) to section 805 and includes definitions. The new subsection (g) defines "affiliated service" as coastwise or intercoastal service other than mixed service. It also defines "common carrier in interstate or foreign commerce" as a person providing water transportation of passengers or cargo in interstate or foreign commerce who (A) assumes responsibility for transportation from the point of receipt to the point of destination, and (B) utilizes, for all or part of that transportation, a vessel operating on the high seas. It defines "hearing" as an adjudication under section 554 of title 5, U.S.C. It defines "mixed service" as a voyage described in section 605(a) of the Act. A mixed service involves vessels serving in both foreign and domestic service.

SECTION 5

This section provides that the amendments to the current law made pursuant to this bill are applicable to operators in interstate or foreign commerce with ODS contracts in effect on or after the date of enactment of this legislation including operators who have previously received permission from the Secretary to enter the domestic trade under section 805(a) of existing law. The Secretary must initiate hearings within 180 days of enactment of the bill to determine whether any mixed or affiliated service by an ODS operator is in accordance with section 805, as amended by this bill. If the operator is not in compliance, the Secretary must issue an order prescribing conditions necessary to achieve compliance. Failure to comply with these conditions shall result in revocation of any previously granted section 805(a) permission. Noncompliance with this section however, shall not constitute a misdemeanor under section 805(a).

ROLLCALL VOTES IN COMMITTEE

In accordance with paragraph 7(c) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following description of the record votes during its consideration of S. 2170:

After debate on S. 2170, the Chairman asked for a rollcall vote on whether to report the bill favorably to the Senate. On a vote of 13 yeas and 7 nays as follows, the bill was ordered reported:

YEAS—13	NAYS—7
Mr. Hollings	Mr. Gore
Mr. Inouye	Mr. Bentsen
Mr. Ford	Mr. Breaux
Mr. Exon	Mr. Robb
Mr. Rockefeller	Mr. Burns
Mr. Kerry [1]	Mr. Gorton
Mr. Bryan	Mr. Lott

1 By proxy.

Mr. Danforth
Mr. Packwood
Mr. Pressler
Mr. Stevens
Mr. Kasten
Mr. McCain

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman).

MERCHANT MARINE ACT, 1936

SECTION 805 OF THAT ACT

SEC. 805. (a) It shall be unlawful to award or pay any subsidy to any contractor under authority of title VI of this Act, or to charter any vessel to any person under title VII of this Act, if said contractor or charterer, or any holding company, subsidiary, affiliate, or associate of such contractor or charterer, or any officer, director, agent, or executive thereof, directly or indirectly, shall own, operate or charter any vessel or vessels engaged in the domestic intercoastal or coastwise service, or own any pecuniary interest, directly or indirectly, in any person or concern that owns, charters, or operates any vessel or vessels in the domestic intercoastal or coastwise service, without the written permission of the Secretary of Transportation. Every person, firm, or corporation having any interest in such application shall be permitted to intervene and the Secretary of Transportation shall give a hearing to the applicant and the intervenors. [The Secretary of Transportation shall not grant any such application if the Secretary of Transportation finds it will result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service or that it would be prejudicial to the objects and policy of this Act: Provided, That if such contractor or other person above-described or a predecessor in interest was in bona-fide operation as a common carrier by water in the domestic, intercoastal, or coastwise trade in 1935 over the route or routes or in the trade or trades for which application is made and has so operated since that time or if engaged in furnishing seasonal service only, was in bona-fide operation in 1935 during the season ordinarily covered by its operation, except in either event, as to interruptions of service over which the applicant or its predecessor in interest had no control, the Secretary of Transportation shall grant such permission without requiring further proof that public interest and convenience will be served by such operation, and without further proceedings as to the competition in such route or trade.] *The Secretary of Transportation, with respect to proposed domestic operation of bulk vessels, shall not grant any such application if the Secretary of Transportation finds it will result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal*

service or that it would be prejudicial to the objects and policy of this Act.

Applications by a common carrier in interstate or foreign commerce for written permission under this subsection shall disclose the nature and scope of operations proposed to be conducted in coastwise or intercoastal trade. The Secretary of Transportation shall hold a hearing on applications by a common carrier in interstate or foreign commerce to operate a proposed mixed foreign and domestic service to receive evidence on the quantity and quality of the existing service, a description of the proposed service and its effect on existing service, and conditions that should be contained in any grant of written permission for the proposed mixed service. After the hearing under this subsection on proposed mixed service, the Secretary of Transportation may grant such application if the Secretary of Transportation finds that the existing service provided in the coastwise or intercoastal trade by all vessels is inadequate: Provided, That such grant shall contain any express conditions necessary to insure that the proposed mixed service (1) will not be prejudicial to the objects and policy of this Act, (2) will not result in any unfair competition to any person, firm, or corporation operating a service exclusively in the coastwise or intercoastal trade, and (3) will not result in the applicant's service in the coastwise or intercoastal trade being supported, directly or indirectly, by any money paid by the United States to a contractor under title VI of this Act to subsidize operations by that contractor in the United States foreign commerce.

In a hearing under this subsection with respect to proposed affiliated service by a common carrier in interstate or foreign commerce, the Secretary of Transportation shall not grant the application unless, after considering the entire record developed during the hearing, the Secretary of Transportation finds that (A) grant of the application will not result in the applicant's service in the coastwise or intercoastal trade being supported, directly or indirectly, by any money paid by the United States to a contractor under title VI of this Act to subsidize operations by that contractor in the United States foreign commerce, (B) grant of the application would not otherwise result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal trade or be prejudicial to the objects and policy of this Act, and (C) that the domestic service proposed by the affiliate of the subsidy contractor will not be provided with any vessels over 25 years old that were built with construction-differential subsidy.

If such application be allowed, it shall be unlawful for any of the persons mentioned in this section to divert, directly or indirectly, any moneys, property, or other thing of value, used in foreign-trade operations, for which a subsidy is paid by the United States, into any such coastwise or intercoastal operations; and whosoever shall violate this provision shall be guilty of a misdemeanor. *Any written permission granted under this subsection to operate in the coastwise or intercoastal trade may be revoked by the Secretary of Transportation following determination that such a violation has occurred.*

(b) through (f) * * *

(g) As used in this section—

(1) The term "affiliated service" means any coastwise or intercoastal service subject to this section other than a mixed service.

(2) The term "common carrier in interstate or foreign commerce" means a person holding itself out to the general public to provide transportation by water of passengers or cargo in interstate or foreign commerce of the United States that (A) assumes responsibility for the transportation from the port or point of receipt to the port or point of destination and (B) utilizes, for all or part of that transportation, a vessel operating on the high seas.

(3) The term "hearing" means an adjudication conducted pursuant to the requirements of section 554 of title 5, United States Code.

(4) The term "mixed service" means a voyage described in section 605(a) of this Act.

MINORITY VIEWS OF MESSRS BREAUX AND LOTT

As the chairman and ranking minority member of the Subcommittee on Merchant Marine, we were disappointed that the Committee voted to report this bill at this time. We seriously question the necessity and desirability of the legislation.

S. 2170 would change the standards currently used by the MarAd in determining whether to allow U.S.-flag carriers receiving ODS or their affiliates to serve the domestic trades, making it more difficult for such subsidized carriers to provide domestic service. Essentially, the proposed changes would effectively shield domestic operators, already protected against foreign-flag competition, from fair U.S.-flag competition that could improve service in a trade and benefit shippers and consumers. Moreover, the new, tougher standard would apply retroactively to previously approved services and would interfere with an on-going administrative proceeding. The bill also would prohibit an affiliate of an operator that receives ODS from using vessels built with CDS once the vessel reaches 25 years of age.

The same issue and the same parties involved in S. 2170 are the subject of an on-going administrative proceeding at MarAd and at DOT. That proceeding involves an application by APL to serve Hawaii with its vessels sailing from the Pacific Coast enroute to the Far East. APL's application was filed more than three years ago.

After two years of evidentiary hearings, an ALJ issued a decision granting APL's application (with certain conditions). That decision was appealed to the Maritime Administrator by Matson Navigation, Sea-Land, and APL (as to the conditions placed on its service). On July 24, 1990, the Deputy Maritime Administrator (in this case acting for the Maritime Administrator, who had to recuse himself) reversed the ALJ's decision and denied APL's application to serve Hawaii. On August 8, 1990, APL petitioned the Secretary of Transportation to review and reverse the Deputy Maritime Administrator's decision and permit APL to serve Hawaii. A decision is expected in the near future. In addition, the parties may appeal to Federal District Court.

S. 2170 is opposed by the Administration, USA, representing almost all U.S.-flag shipping companies engaged in international trade, APL, and the Union Pacific Railroad.

At a subcommittee hearing on S. 2170 on May 16, 1990, MarAd testified that there was no need for the bill and that its substantive and procedural implications would be harmful. Specifically, MarAd testified that the bill's: (1) procedural imposition is unnecessary given recent regulatory changes and would result in reduced flexibility of administration; and (2) substantive changes involve an unjustified distinction among proposed types of domestic services. MarAd further testified that: the provisions in current law are ade-

quate to prevent the direct or indirect payment of ODS for domestic service; the Administration is strongly opposed to any retroactive application of new standards; and resolution of concerns regarding providing domestic service with older CDS-built vessels should be addressed in the context of the pending Secretarial review of the entire range of maritime policy.

The Administration's opposition was reaffirmed in a July 27, 1990, letter from the General Counsel of the DOT, Phillip Brady, stating that "the Administration strongly believes that this legislation is unnecessary and should not go forward."

At the subcommittee hearing, USA also voiced opposition to the legislation for several reasons: (1) the bill focuses on only one section of the Merchant Marine Act of 1936, whereas there is pressing need to overhaul and comprehensively reform all the provisions of the 1936 Act which established and govern the ODS program; (2) the bill is ill timed in that it addressed the substance of an ongoing administrative proceeding (APL's application to serve Hawaii); and (3) the bill would retroactively deprive its members of the value and utilization of a certain class of vessels (CDS vessels in excess of 25 years old).

USA's opposition also was reaffirmed in a June 25, 1990, letter in which the organization states that it "continues to be opposed to S. 2170 * * * [the issues should] be considered in the overall context of ODS reform. * * *"

At the hearing, APL also testified in opposition, expressing concern about possible interference with the administrative process and characterized the legislation as anti-shipper, anti-consumer and anti-trade.

Based on our review of the legislation, assessment of its relationship to other pending maritime matters, and the hearing record, we believe it would be unwise to move forward with S. 2170 for several reasons.

First, we do not believe that there is an evidentiary basis for deciding that current law is inadequate.

Second, we have very serious reservations about the proposed legislation, especially as to the bill's direct effect on the ongoing administrative proceeding. APL initiated that proceeding over three years ago. We feel that it is unfair to now change the rules and force a result. Our concern is not so much the effect on the individual companies involved, but the integrity of the administrative proceeding itself.

Third, we believe that this issue is better considered in the context of overall ODS reform. We have introduced, by request, comprehensive ODS reform legislation (S. 2773) that includes provisions that address the very issues that are the subject of this bill—the conditions under which subsidized operators may enter the domestic trade. The ODS legislation represents a consensus among the U.S.-flag fleet engaged in the international trade. We are awaiting the Administration's finalization of its maritime policy and it is our intention to promptly hold hearings as soon as that policy is announced.

Finally, we agree with the sentiments expressed in a July 30, 1990, letter from Michael Walsh, Chairman and CEO of the Union Pacific Railroad, in which he states his belief that "S. 2170 is anti-

competitive and certainly counter to Congress' recent history of reducing government intervention and regulation of industry."

In short, we believe it would be inappropriate to enact such legislation and believe that a more thorough evaluation of the underlying issues is appropriate within the context of broader ODS reform legislation.

JOHN B. BREAUX.
TRENT LOTT.

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